

P-5554/07EN
Answer given by Mr Figel'
on behalf of the Commission
(3.12.2007)

The UNESCO¹ Convention was approved by the Council on behalf of the Community by means of Decision 2006/515/EC². The Council Decision is based on the procedural legal basis of Article 300(2) and (3) EC. According to paragraph 7 of Article 300 of the EC Treaty, agreements concluded under the conditions set out in Article 300 of the EC Treaty 'shall be binding on the institutions of the Community and on the Member States'. The UNESCO Convention is thus binding on the Community, and forms part of EC law.

The Community is duty-bound to implement the UNESCO Convention when exercising the competences it enjoys in policy areas which are covered by the Convention. According to Annex 1(b) to the Council Decision, these areas are: the common commercial policy, development cooperation policy, economic, financial and technical cooperation with third countries, free movement of goods, persons, services and capital, competition, and the internal market, including intellectual property. Pursuant to Article 151(4) of the EC Treaty, the Community also needs to take cultural aspects into account in its action under other provisions of the EC Treaty, in particular in order to respect and promote the diversity of its cultures.

The implementation of the Convention in the above mentioned areas entails that Community measures need to conform to the Convention. Accordingly, the Convention is pertinent for any Community activity launched with a view to implementing Article 151(4) of the EC Treaty. The text of Council Decision 2006/515/EC actually stipulates that 'the UNESCO Convention constitutes a relevant and effective pillar for promoting cultural diversity and cultural exchanges, to which both the Community, as reflected in Article 151(4) of the EC Treaty, and its Member States attach the greatest importance'.

The UNESCO Convention is a mixed agreement. Both the Community and its Member States have competence in the fields covered by it. Through ratification of the Convention, Member States undertake the obligation to implement the Convention in areas of national competence. These are the policy areas covered by the UNESCO Convention which are not contained in Annex 1(b) of the Council Decision.

The unilateral declaration on behalf of the Community, contained in Annex 2 to the Council Decision, stipulates: 'As regards the Community competences described in the Declaration pursuant to Article 27(3)(c) of the Convention, the Community is bound by the Convention and will ensure its due implementation. It follows that the Member States of the Community which are party to the Convention in their mutual relations apply the provisions of the Convention in accordance with the Community's internal rules and without prejudice to appropriate amendments being made to these rules'.

Hence, with respect to the policy areas which are covered by the Convention and for which competence belongs to the Community, Member States' mutual relations are governed by EC law. EC law must be in conformity with the Convention. As to the policy areas which are covered by the Convention and for which competence belongs to the Member States, the Convention applies in Member States' mutual relations.

¹ United Nations Educational, Scientific and Cultural Organisation.

² Council Decision 2006/515/EC of 18 May 2006 on the conclusion of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, OJ L 201, 25.7.2006.